

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

SOUTHWEST MICHIGAN SYMPHONY ORCHESTRA,
Respondent–Employer,

Case No. C06 B-028

- and -

AMERICAN FEDERATION OF MUSICIAN, LOCAL 232,
Charging Party-Labor Organization.

APPEARANCES:

Dewane, Peterson & Cullitan, PLC, by John E. Dewane, Esq. for the Employer

Christopher Durham, for the Labor Organization

DECISION AND ORDER

On April 28, 2006, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON
MOTION FOR SUMMARY DISPOSITION

On February 13, 2006, Charging Party American Federation of Musicians, Local 232, filed an unfair labor practice charge against Respondent Southwest Michigan Symphony Orchestra alleging violations of Sections MCL 423.210 (a), (b), (c), (d) and MCL 423.215(1). The charge alleges that in a letter written by a member of Respondent's bargaining team, Respondent placed unlawful conditions on bargaining. In the letter addressed to the orchestra committee, Respondent's vice president of operations stated that during a January 13 meeting, a member of Charging Party's bargaining team made unwarranted, unproven, slanderous and reprehensible attacks on his reputation and integrity. Those comments, he wrote, have poisoned the atmosphere and that the letter writer's continued presence on the orchestra committee will make future negotiating sessions unnecessarily complicated and far more difficult than they otherwise would be for both parties.

On April 4, 2006, Respondent filed a motion for summary disposition alleging that Charging Party failed to state a claim for which relief can be granted under PERA because: (1) Respondent is not a public employer and, therefore, MCL 423.210 and MCL 423.215 do not apply to this case; (2) the letter does not, as a matter of fact and law, place any unlawful conditions upon bargaining; and (3) the letter is an expression of the author's opinion, which is protected by Article 1 Section 5 of the Michigan Constitution and by the First Amendment of the United States Constitution.

On April 5, 2006, Charging Party was granted ten day to show cause why the charge should not be dismissed. In a response filed on April 27, 2006, Charging Party has

failed to comply with the order only asserting that it intended to proceed with the hearing and disagreed with the Respondent's motion. I recommend that the charge be dismissed since Charging Party did comply with the show cause order and did not file a response within the time limit set forth in Commission R 423.161, Rule 161(3).

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____